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July 20, 2004

***Ex Parte* – Electronically Filed**

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Forbearance of the Verizon Telephone Companies,* CC Docket No. 01-338; *In the Matter of SBC Communications Inc.'s Petition for Forbearance under 47 U.S.C. § 160(c)*, WC Docket No. 03-235; *In the Matter of Qwest Communications Int'l Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket No. 03-260

Dear Ms. Dortch:

I am writing on behalf of AT&T Corp. ("AT&T") in response to a May 18, 2004, submission of Verizon and the supplemental declaration of Jerome Holland.[1]

At the outset, the declaration – and Verizon's petition – is based on a fundamental misreading of the Communications Act. Under Mr. Holland's and Verizon's view, *any* costs that Verizon and other Bell Operating Companies might incur to accommodate access to the Bells' "broadband" facilities are excessive, and therefore forbearance from regulatory obligations requiring such access is necessarily justified to reduce the Bells' costs. However, Congress adopted the exact opposite view in section 271 and section 10 of the Act. In section 271, Congress determined that the Bells could enter and remain providers in in-region, interLATA markets only if they continued to provide access to checklist items including "loop transmission," "transport," and "switching" – regardless of whether those facilities are used for

[1] Letter from Dee May, Verizon, to Marlene Dortch, FCC, CC Docket No. 01-337, et al., (May 18, 2004) (attaching declaration of Jerome Holland ("Holland Supp. Decl.")).

narrowband or broadband services.[2] As AT&T has explained, Congress in section 271(d)(4) expressly prohibited the Commission from limiting these checklist requirements "by rule or otherwise," and the Commission therefore cannot use its authority under section 10 of the Act, even if Verizon and the other Bells had shown that the requirements of that section had been met – which they have not.[3] Under the Congressional scheme, the costs incurred by the Bells in complying with section 271 in opening their networks are simply irrelevant and, in all events, are more than offset by the benefits the Bells could achieve by entering the long distance market.[4] Congress certainly did not intend for Verizon and the Bells to be authorized to enter the long distance market, and then shortly thereafter be excused from complying with the section 271 market-opening obligations, simply because they might impose some costs on the Bells.[5] As Verizon's public statements indicate, its entry into interLATA markets has apparently provided it with significant revenues and other benefits[6] – yet it seeks to retain all of these benefits at the same time that it requests elimination of the costs associated with ongoing section 271 compliance.

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[2] *Cf. ASCENT* v. *FCC*, 235 F.2d 662, 668 (D.C. Cir. 2001) ("Congress did not treat advanced services differently from other telecommunications services").

[3] *See* Letter of D. Lawson, counsel for AT&T, to Marlene Dortch, FCC, at 2-17 (March 3, 2004) (explaining why § 271(d)(4) prevents forbearance and why the § 10 requirements, including § 10(d) limitation on forbearance, have not been met).

[4] *See, e.g.*, *BellSouth Corp.* v. *FCC*, 162 F.3d 678, 681 (D.C. Cir. 1998) ("the BOCs were better off in terms of business market opportunities under the Act than they had been under the MFJ"); *id.* at 690 ("§ 271 actually benefits the BOCs by relieving them of certain burdens"); *BellSouth Corp.* v. *FCC*, 144 F.3d 58, 66 (D.C. Cir. 1998); *SBC Communications Inc.* v. *FCC*, 154 F.3d 226, 244 (5th Cir. 1998).

[5] *See BellSouth Corp.*, 144 F.3d at 66 n.8 ("it is doubtful that Congress would have intended the many provisions of the Act beneficial to the BOCs to survive deletion of th[e] burdensome [provisions]").

[6] Verizon 2003 On-Line Annual Report, ("long distance service revenues increased $618 million, or 19.5% in 2003 principally as a result of customer growth from our interLATA long distance services") (available at http://investor.verizon.com/2003annual/financials/mda3.shtml); Press Release, "Verizon Reports First-Quarter Revenue Growth of 3.9%, Including Industry-Leading Wireless Revenue Growth of $1.1 Billion," Apr. 27, 2004 ("Verizon's overall top-line growth was supported by increases in wireline long-distance and broadband. Long-distance revenues increased 13.3 percent, from $0.9 billion in first-quarter 2003 to $1.0 billion in first-quarter 2004, as Verizon added a net of 1.0 million long-distance lines in the quarter") (available at http://investor.verizon.com/news/VZ/2004-04-27_X621772.html).

For these reasons, even if Verizon had shown that complying with section 271 requirements were unusually costly, that would not justify forbearance from those requirements. In fact, however, Mr. Holland's declaration provides *no* credible evidence that it would be unduly expensive for Verizon to comply with the requirements of section 271 of the Act with respect to "broadband" facilities.

To begin with, Mr. Holland has abandoned the position in his initial declaration that it is not possible, at any cost, for Verizon to comply with section 271 and provide competitive access to FTTP facilities. In his initial declaration on this matter, Mr. Holland asserted – with no serious explanation – that "FTTP network design does not accommodate intermediate points of interconnection."[7] After AT&T showed that access could be provided at, among other places, the ATM switch,[8] Verizon and Mr. Holland now reverse course.

At present, Mr. Holland's principal claim is that unbundling of FTTP facilities would be expensive because it is "a *new* network that has been designed optimally and efficiently" and that requiring "unbundl[ing] now" would require the network to be redesigned. Holland Supp. Decl. ¶ 3.[9] At bottom, this is simply an admission that Verizon has been designing its network in complete disregard of its well-established obligations under the Act. Contrary to Verizon's view that unbundling is only being required "now," the Act and the section 271 obligations have been in place for years. If Verizon needs to "redesign[]" its FTTP network to accommodate access by competing carriers, that could only mean that it is no longer in compliance with its section 271 obligations. In these circumstances, the Commission should

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[7] Declaration of Jerome Holland, at 7 (submitted in Letter of Ann D. Berkowitz, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 01-337, et al. (March 29, 2004)). Given this statement and his unqualified assertion that "[n]ew FTTP are neither designed not built to accommodate access by multiple carriers," *id.* ¶ 15, it certainly appeared to any reasonable reader that Verizon and Mr. Holland were claiming that it was not technically possible to provide competitors with access to FTTP facilities. Mr. Holland's claim (Supp. Decl. ¶ 3) that AT&T misrepresented his position is belied by his own testimony.

[8] Letter of C. Frederick Beckner III, Counsel for AT&T, to Marlene H. Dortch, FCC, CC Docket No. 01-338 et al. (Apr. 15, 2004) (attaching Declaration of Scott Mollica). As Mr. Mollica explained, competing carriers could interconnect at the port of an ATM "switch" – just as Verizon does. Mollica Decl. ¶ 8. Mr. Holland claims that Verizon does not use the precise brand of ATM switch discussed by AT&T, but Mr. Holland does not describe Verizon's facilities or explain why Verizon could not provide access to those facilities in the same manner described by Mr. Mollica.

[9] Apparently, Mr. Holland agrees that Verizon's existing network facilities were designed suboptimally and inefficiently.

be instituting enforcement proceedings against Verizon, not freeing them of regulatory obligations.

Mr. Holland offers an utterly incoherent explanation as to why compliance with section 271 obligations would be especially costly. His claim reduces to the proposition that, even though the costs of compliance are "unknown" (Supp. Decl. ¶ 3), he "knows" that they would be significant. Mr. Holland offers no basis for his purported knowledge that the costs would be great. In fact, Mr. Holland concedes that he (i) currently does not have any basis to know what the actual costs of compliance would in fact be (*i.e.*, they are "unknown"), (ii) has not, apparently, even attempted to study or quantify these costs (let alone to substantiate the costs with verifiable documentation), and (iii) has not compared these hypothetical costs to, for example, Verizon's overall capital expenditures or revenues from long distance services. He nevertheless contends that the Commission should trust and accept his conclusions at face value. But all that Mr. Holland provides are generic, *ipse dixit* claims that compliance with section 271 for FTTP would lead to "significant cost, delay, and inefficiency." Holland Supp. Decl. ¶ 3; *id.* ¶¶ 2, 5. Without any quantifiable and verifiable evidence to corroborate Mr. Holland's opinions, the Commission could not rationally conclude that the costs of compliance with section 271 are especially significant.

Indeed, in prior submissions, AT&T pointed to two simple facts indicating that the costs of providing access to FTTP pursuant to section 271 would not be especially high. AT&T April 15 *Ex Parte* at 2, 4. *First*, AT&T pointed to Verizon's prior assurances that it would voluntarily provide competitors with access to these facilities – which demonstrates that providing access is not only technically feasible, but was thought by Verizon and other Bells to be commercially viable as well.[10] Mr. Holland's supplemental declaration does not even address these facts. It is difficult to understand why Verizon would represent that it would voluntarily seek to enter commercial contracts with competitive carriers to provide access to these facilities if, as Mr. Holland claims, doing so would "substantially increase the cost and operational complexity of this new network, undermine the economics of this risky investment and delay deployment." Holland Supp. Decl. ¶ 3. The reality is that Mr. Holland's claims are both unsupported and not true. Having secured relief from section 251 unbundling requirements, Verizon now seeks to renege on its prior statements and to choke off competition by eliminating entirely the requirements to provide wholesale access, including its section 271 obligations.

*Second*, AT&T explained that any costs of developing OSS and related support systems for these facilities would likely be mitigated because Verizon and the Bells have already

[10] *Id*. at 2 n.3 (citing *TRO*, 18 FCC Rcd. 16978, ¶ 253 & n.755); *see also* Comments of Verizon, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, at 82 (Apr. 5, 2002) (stating that Verizon did not "intend[] to adopt a closed network model" and that there can be "significant value in maintaining a wholesale business that allow other providers to reach their customers over our network")

developed OSS for narrowband facilities and, even absent the section 271 checklist obligations, would need to develop such systems to comply with the section 251(c)(4) obligation to offer services for resale. AT&T April 15 *Ex Parte* at 4. Mr. Holland claims that Verizon is building new systems for FTTP deployment and that OSS used for resale of services is simpler than would be needed for access pursuant to section 271. Holland Supp. Decl. ¶ 5. These claims, even if true, are simply not responsive.[11] For the same reasons described above, Verizon should not be excused from compliance with section 271 requirements because it chose to design new OSS that, despite the requirements of section 271, are not accessible by competitive carriers. Further, the fact that OSS used for resale might not be identical to the systems Verizon would need to provide in order to comply with section 271 does not mean that the systems are "fundamentally different," as Mr. Holland claims (¶ 5) (without any documentation or support), or that Verizon should simply be relieved its statutory obligations to provide such access. The fundamental point – which Mr. Holland does not seriously contest – is that the development of OSS and related systems will be less costly as a result of the existing systems that Verizon has already developed.

Sincerely,

/s/ David L. Lawson

David L. Lawson

[11] It is not clear what Mr. Holland means by "entirely new systems" to support the FTTP deployment, but it is difficult to imagine that the costs of those systems, even if separate from any narrowband OSS, are not reduced in some significant manner by the experiences Verizon has accumulated over the last several years in developing multi-carrier OSS.